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TikTok Inc. and ByteDance Inc.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BERNADINE GRIFFITH, et al.,
Individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

TIKTOK INC., a corporation;
BYTEDANCE, INC. a corporation,

Defendants.

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DYLAN GRACE SAVAGE,
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Case No. 5:23-cv-0964-SB-E

JOINT APPENDIX OF FACTS

**REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL**

Judge: Hon. Stanley Blumenfeld, Jr.
Place: Courtroom 6C

Action Filed: May 26, 2023
Trial Date: January 20, 2025

JOINT APPENDIX OF FACTS

Plaintiffs BERNADINE GRIFFITH, PATRICIA SHIH, and JACOB WATTERS (“Plaintiffs”), and Defendants TIKTOK INC. and BYTEDANCE, INC. (“Defendants”), hereby submit this Joint Appendix of Facts in Support of their Joint Brief Re Motion for Summary Judgment.

<u>SUF NO.</u>	<u>FACT</u>	<u>SUPPORTING EVIDENCE</u>	<u>RESPONSE</u>
<u>BACKGROUND</u>			
1.	The Pixel is a piece of code that can be embedded on webpages to send information about online events to Defendant TikTok, Inc.	• Li Dep. at 38:5-10, JAE Ex. 3	Undisputed
2.	Events API is server-to-server connection that can be used to send information directly from an advertiser’s server to Defendant TikTok, Inc.	• Li Dep.at 48:8-10, JAE Ex. 3	Undisputed
3.	Advertisers control whether to use these tools.	• Li Dep.at 141:10-13, JAE Ex. 3	Undisputed
4.	Website owners control the installation and configuration of these	• Li Dep. at 38:5-10, 38:17-22 39:6-	Disputed. The evidence reflects that Defendants at least in

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tools and what is shared.	10, 48:14-17, JAE Ex. 3	<p>part control the installation and configuration of the Pixel and Events API and the data they collect through these tools.</p> <ul style="list-style-type: none"> • Shafiq Opening Class Cert. Decl. at ¶35 (JAE Ex. 30) • Shafiq Class Cert. Reply Decl. at ¶19 (JAE 56) • Schnell Class Cert Decl. at ¶41 (JAE Ex. 28) • TIKTOK-BG-000000875 (JAE Ex. 61) • TIKTOK-BG-000151364 (JAE Ex. 62) • TIKTOK-BG-000151574 (JAE Ex. 63)
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			<ul style="list-style-type: none"> TIKTOK-BG-000150667 (JAE Ex. 64)
5.	Both tools collect and send information about website visitors without regard to whether they are TikTok users, which Defendants attempt to match to their records of TikTok users.	<ul style="list-style-type: none"> Sahni Dep. at 194:23-195:3, JAE Ex. 6 	Undisputed
<p><u>Issue 1. DEFENDANTS' POSITION: THERE IS NO EVIDENCE THAT ANY IDENTIFYING OR SENSITIVE DATA ABOUT PLAINTIFFS WAS DISCLOSED TO DEFENDANTS.</u></p>			
6.	No sensitive personal information of Plaintiffs was disclosed to or collected by Defendants through use of the Pixel.	<ul style="list-style-type: none"> Schnell September Report ¶¶ 18-19, 29 38, 40, 47, 59, JAE Ex. 29 Li Dep. at 39:6-10, JAE Ex. 3 Griffith iPhone 	<p>Disputed. The evidence provides facts upon which a reasonable jury could conclude that</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 4-46 (JAE 58)

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		<p>Artifacts (Webkit Browser Web History tab), JAE Ex. 11</p> <ul style="list-style-type: none"> Griffith Desktop Artifacts (Chrome Web History tab), JAE Ex. 12 Shih Macbook Internet Artifacts (Browser History tab), JAE Ex. 21 Shih HD1 Internet Artifacts (Browser History 	<ul style="list-style-type: none"> Shafiq Opening Report, Section V, ¶¶ 52-67 (JAE Ex. 57) Supplemented Appendix D to Shafiq Opening Report (JAE Ex. 66) Supplemented Appendix R to Shafiq Opening Report (JAE Ex. 67)
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		<ul style="list-style-type: none"> tab), JAE Ex. 22 Shih HD2 Internet Artifacts (Browser History tab), JAE Ex. 23 Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 Watters Desktop Internet Artifacts (Firefox Web History tab, Firefox Web Visits tab, Other History 	
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		<p>tab), JAE</p> <p>Ex. 25</p> <ul style="list-style-type: none"> Watters <p>Galaxy S22</p> <p>Internet</p> <p>Artifacts</p> <p>(Chrome</p> <p>Tab History</p> <p>tab,</p> <p>Chrome</p> <p>Web</p> <p>History tab,</p> <p>Chrome</p> <p>Web Visits</p> <p>tab), JAE</p> <p>Ex. 26</p> <ul style="list-style-type: none"> Watters <p>Galaxy</p> <p>A02s</p> <p>Internet</p> <p>Artifacts</p> <p>(Chrome</p> <p>Web</p> <p>History</p>	
7.	No sensitive personal information of Plaintiffs was disclosed	<ul style="list-style-type: none"> Schnell <p>September</p> <p>Report ¶¶</p>	Disputed. The evidence provides facts upon which a

1	to Defendants through	18-19, 29	reasonable jury could
2	use of Events API.	38, 40, 47,	conclude that
3		59, JAE	[REDACTED]
4		Ex. 29	[REDACTED]
5		• Li Dep. at	[REDACTED]
6		39:6-10,	[REDACTED]
7		JAE Ex. 3	[REDACTED]
8		• Griffith	• Shafiq SJ
9		iPhone	Declaration at
10		Artifacts	¶¶ 4-46 (JAE 58)
11		(Webkit	• Shafiq Opening
12		Browser	Report at Sec. V
13		Web	(¶¶ 52-67) (JAE
14		History	Ex. 57)
15		tab), JAE	• Supplemented
16		Ex. 11	Appendix D to
17		• Griffith	Shafiq Opening
18		Desktop	Report (JAE Ex.
19		Artifacts	66)
20		(Chrome	• Supplemented
21		Web	Appendix R to
22		History	Shafiq Opening
23		tab), JAE	Report (JAE Ex.
24		Ex. 12	67)
25		• Shih	
26		Macbook	
27		Internet	
28		Artifacts	

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		<p>(Browser History tab), JAE Ex. 21</p> <ul style="list-style-type: none"> • Shih HD1 Internet Artifacts (Browser History tab), JAE Ex. 22 • Shih HD2 Internet Artifacts (Browser History tab), JAE Ex. 23 • Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 • Watters Desktop 	
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		Internet Artifacts (Firefox Web History tab, Firefox Web Visits tab, Other History tab), JAE Ex. 25 • Watters Galaxy S22 Internet Artifacts (Chrome Tab History tab, Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 26 • Watters Galaxy A02s	
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		<ul style="list-style-type: none"> Griffith Desktop Artifacts (Chrome Web History tab), JAE Ex. 12 Shih Macbook Internet Artifacts (Browser History tab), JAE Ex. 21 Shih HD1 Internet Artifacts (Browser History tab), JAE Ex. 22 Shih HD2 Internet Artifacts (Browser History 	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶47-48 (JAE Ex. 58) JAE Ex. 72 (list of URLs containing plaintext email addresses)
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		tab), JAE Ex. 23 <ul style="list-style-type: none">• Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 • Watters Desktop Internet Artifacts (Firefox Web History tab, Firefox Web Visits tab, Other History tab), JAE Ex. 25 • Watters Galaxy S22 Internet Artifacts (Chrome	
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		<p>Tab History tab, Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 26</p> <ul style="list-style-type: none"> Watters Galaxy A02s Internet Artifacts (Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 27 	
9.	Any information disclosed about Plaintiffs' online activities to Defendants did not reveal to Defendants or enable	<ul style="list-style-type: none"> Schnell September Report ¶¶ 18-19, 29, 38, 40, 47, 59, 61, JAE Ex. 29 	<p>Disputed. The evidence demonstrates that [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

1	them to discover their	• Shafiq CC ¶¶	[REDACTED]
2	actual personal identity.	58-63, JAE	[REDACTED]
3		Ex. 3030	[REDACTED]
4		• Schnell July	[REDACTED]
5		Report ¶ 33,	[REDACTED]
6		JAE Ex. 28	[REDACTED]
7		• Griffith iPhone	[REDACTED]
8		Artifacts	[REDACTED]
9		(Webkit	• Shafiq SJ
10		Browser Web	Declaration, Sec. I
11		History tab),	at ¶¶ 7-8, 11, 34
12		JAE Ex. 11	(JAE 58)
13		• Griffith	• Shafiq Opening
14		Desktop	Report at Sec. V
15		Artifacts	(¶¶52-67) (JAE
16		(Chrome Web	Ex. 57)
17		History tab),	• Supplemented
18		JAE Ex. 12	Appendix D to
19		• Shih Macbook	Shafiq Opening
20		Internet	Report (JAE Ex.
21		Artifacts	66)
22		(Browser	• Supplemented
23		History tab),	Appendix R to
24		JAE Ex. 21	Shafiq Opening
25		• Shih HD1	Report (JAE Ex.
26		Internet	67)
27		Artifacts	
28		(Browser	

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		<p>History tab), JAE Ex. 22</p> <ul style="list-style-type: none"> • Shih HD2 Internet Artifacts (Browser History tab), JAE Ex. 23 • Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 • Watters Desktop Internet Artifacts (Firefox Web History tab, Firefox Web Visits tab, Other History tab), JAE Ex. 25 • Watters Galaxy S22 Internet 	
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		<p>Artifacts (Chrome Tab History tab, Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 26</p> <ul style="list-style-type: none"> Watters Galaxy A02s Internet Artifacts (Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 27 	
10.	<p>The browsing history for Plaintiffs do not reveal that any of the URLs for Hulu, Etsy, RiteAid, Build-A-Bear, Upwork or Sweetwater webpages disclosed Plaintiffs' name, date of birth, phone number,</p>	<ul style="list-style-type: none"> Griffith iPhone Artifacts (Webkit Browser Web History tab), JAE Ex. 11 Griffith Desktop Artifacts (Chrome Web 	<p>Undisputed. <i>But see</i> JAO.</p>

1	email address or	History tab),	
2	physical address.	JAЕ Ex. 12	
3		• Shih Macbook	
4		Internet	
5		Artifacts	
6		(Browser	
7		History tab),	
8		JAЕ Ex. 21	
9		• Shih HD1	
10		Internet	
11		Artifacts	
12		(Browser	
13		History tab),	
14		JAЕ Ex. 22	
15		• Shih HD1	
16		Internet	
17		Artifacts	
18		(Browser	
19		History tab,	
20		row 16), JAЕ	
21		Ex. 22	
22		• Shih HD2	
23		Internet	
24		Artifacts	
25		(Browser	
26		History tab),	
27		JAЕ Ex. 23	
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		<ul style="list-style-type: none"> • Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 • Watters Desktop Internet Artifacts (Firefox Web History tab, Firefox Web Visits tab, Other History tab), JAE Ex. 25 • Watters Galaxy S22 Internet Artifacts (Chrome Tab History tab, Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 26 	
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		<ul style="list-style-type: none"> Watters Galaxy A02s Internet Artifacts (Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 27 	
11.	The browsing history for Plaintiffs do not reveal that any of the URLs for Hulu, <i>Etsy</i> , RiteAid, Build-A-Bear, Upwork or Sweetwater webpages disclosed any of Plaintiffs' <i>sensitive</i> information.	<ul style="list-style-type: none"> Griffith iPhone Artifacts (Webkit Browser Web History tab), JAE Ex. 11 Griffith Desktop Artifacts (Chrome Web History tab), JAE Ex. 12 Shih Macbook Internet Artifacts (Browser History tab), JAE Ex. 21 	<p>Disputed in part.</p>            

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		<ul style="list-style-type: none">• Shih HD1 Internet Artifacts (Browser History tab), JAE Ex. 22• Shih HD1 Internet Artifacts (Browser History tab, row 16), JAE Ex. 22• Shih HD2 Internet Artifacts (Browser History tab), JAE Ex. 23• Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24• Watters Desktop Internet	
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		Artifacts (Firefox Web History tab, Firefox Web Visits tab, Other History tab), JAE Ex. 25 <ul style="list-style-type: none">Watters Galaxy S22 Internet Artifacts (Chrome Tab History tab, Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 26 Watters Galaxy A02s Internet Artifacts (Chrome Web History tab, Chrome Web Visits tab), JAE Ex. 27	
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1	12.	Griffith did not disclose	• Build-A-Bear	Disputed in part. As
2		<i>sensitive personal</i>	Workshop	to “personal”
3		<i>information</i> while	Letter, JAE	information: The
4		visiting the <i>Hulu, Etsy,</i>	Ex. 8	evidence
5		<i>RiteAid</i> , or Build-A-	• Griffith iPhone	demonstrates that
6		Bear webpages that was	Artifacts	
7		transmitted to	(Webkit	
8		Defendants through	Browser Web	
9		those websites’ use of	History tab),	
10		Pixel or Events API.	JAE Ex. 11	
11			• Griffith	
12			Desktop	
13			Artifacts	
14			(Chrome Web	
15			History tab),	
16			JAE Ex. 12	
17			• Griffith	
18			November	
19			2023 Hulu	
20			Report at 1,	
21			JAE Ex. 13	
22			• Griffith April	
23			2023 Hulu	
24			Report at 1,	• Shafiq SJ
25			JAE Ex. 14	Declaration at
26			• Griffith 2020	¶¶ 4-48 (JAE 58)
27			Hulu Report at	• Shafiq Opening
28			1, JAE Ex. 15	Report at Sec. V












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		<ul style="list-style-type: none">• Griffith 2019 Hulu Report at 1, JAE Ex. 16• Griffith Dep. 173:25-176:21, JAE Ex. 2	<ul style="list-style-type: none">• (¶¶52-67) (JAE Ex. 57)• Supplemented Appendix D to Shafiq Opening Report (JAE Ex. 66)• Supplemented Appendix R to Shafiq Opening Report (JAE Ex. 67)• JAE Ex. 72 <p>As to “sensitive” information:</p> <p>Defendants [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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			<div style="background-color: black; height: 1.2em; width: 100%;"></div> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 95%;"></div> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 95%;"></div> <ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶10, 48 (JAE Ex. 58)
13.	Shih did not disclose <i>sensitive personal information</i> while visiting the Hulu, <i>Etsy</i> , or <i>Upwork</i> webpages that was transmitted to Defendants through those websites’ use of Pixel or Events API.	<ul style="list-style-type: none"> Shih Dep. at 220:18-22, JAE Ex. 5 Shih Dep. at 205:13-206:14, JAE Ex. 5 Shih Dep. at 212:2-9, JAE Ex. 5 Shih Dep. at 216:12-217:25; 266:21-271:18, JAE Ex. 5 Shih Hulu Report, JAE Ex. 18 	<p>Disputed in part. As to “personal” information: Defendants <div style="background-color: black; height: 1.2em; width: 60%;"></div></p> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 95%;"></div> <div style="background-color: black; height: 1.2em; width: 95%;"></div> <div style="background-color: black; height: 1.2em; width: 95%;"></div> <div style="background-color: black; height: 1.2em; width: 80%;"></div> <p>As to “sensitive” information:</p> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 80%;"></div> <div style="background-color: black; height: 1.2em; width: 90%;"></div> <div style="background-color: black; height: 1.2em; width: 90%;"></div>























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18	14.	Watters did not disclose	• Watters Dep.	Disputed in part.
19		<i>sensitive personal</i>	at 65:22-66:9,	As to “personal”
20		<i>information</i> while	87:25-88:2,	information: The
21		visiting the <i>Etsy</i> ,	138:1-20, JAE	evidence
22		<i>Upwork</i> , or Sweetwater	Ex. 7	demonstrates that
23		webpages that was	• Watters Dep.	
24		transmitted to	at 143:19-	
25		Defendants through	144:15, 148:4-	
26		those websites’ use of	18, JAE Ex. 7	
27		Pixel or Events API.		
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1			<ul style="list-style-type: none"> Watters Dep. at 160:2-14, JAE Ex. 7 	
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4			<ul style="list-style-type: none"> Watters Desktop 	
5			Internet	
6			Artifacts	
7			(Firefox Web	
8			History tab,	
9			Firefox Web	
10			Visits tab,	
11			Other History	
12			tab), JAE Ex. 25	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 4-48 (JAE 58)
13			<ul style="list-style-type: none"> Watters Galaxy S22 	<ul style="list-style-type: none"> Shafiq Opening Report at Sec. V (¶¶ 53-67) (JAE Ex. 57)
14			Internet	
15			Artifacts	
16			(Chrome Tab	<ul style="list-style-type: none"> Supplemented Appendix D to Shafiq Opening Report (JAE Ex. 66)
17			History tab,	
18			Chrome Web	
19			History tab,	
20			Chrome Web	
21			Visits tab),	<ul style="list-style-type: none"> Supplemented Appendix R to Shafiq Opening Report (JAE Ex. 67)
22			JAE Ex. 26	
23			<ul style="list-style-type: none"> Watters Galaxy A02s 	
24			Internet	
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1			Artifacts	<ul style="list-style-type: none"> JAE Ex. 72
2			(Chrome Web	
3			History tab,	As to “sensitive”
4			Chrome Web	information:
5			Visits tab),	Defendants [REDACTED]
6			JAE Ex. 27	[REDACTED]
7				[REDACTED]
8				[REDACTED]
9				[REDACTED]
10				[REDACTED]
11				[REDACTED]
12				[REDACTED]
13				[REDACTED]
14				[REDACTED]
15				[REDACTED]
16				[REDACTED]
17				[REDACTED]
18				[REDACTED]
19				[REDACTED]
20				Shafiq SJ Declaration
21				at ¶¶10, 48 (JAE Ex.
22				58)
23	15.	<i>Griffith did not use</i>	<ul style="list-style-type: none"> Schnell 	Disputed in part.
24		<i>any sensitive search</i>	September	Defendants [REDACTED]
25		<i>terms while visiting</i>	Report ¶¶ 81-	[REDACTED]
26		<i>Hulu, Etsy, RiteAid</i>	83, Ex. 29	[REDACTED]
27		and Build-a-Bear	<ul style="list-style-type: none"> Griffith iPhone 	[REDACTED]
28		<i>webpages.</i>	Artifacts	[REDACTED]


















1		(Webkit	[REDACTED]
2		Browser Web	[REDACTED]
3		History tab),	[REDACTED]
4		JAE Ex. 11	[REDACTED]
5		• Griffith	[REDACTED]
6		Desktop	[REDACTED]
7		Artifacts	[REDACTED]
8		(Chrome Web	[REDACTED]
9		History tab),	[REDACTED]
10		JAE Ex. 12	[REDACTED]
11		• Griffith Dep.	[REDACTED]
12		at 220:8-	[REDACTED]
13		222:1, JAE	Shafiq SJ Declaration
14		Ex. 2	at ¶¶10, 48 (JAE Ex.
15			58)
16			
17	16.	Shih did not use any	Disputed. Defendants
18		sensitive search terms	[REDACTED]
19		while visiting Hulu,	[REDACTED]
20		Etsy and Upwork	[REDACTED]
21		webpages.	[REDACTED]
22		• Shih Macbook	[REDACTED]
23		Internet	[REDACTED]
24		Artifacts	[REDACTED]
25		(Browser	[REDACTED]
26		History tab),	[REDACTED]
27		JAE Ex. 21	[REDACTED]
28		• Shih HD1	[REDACTED]
		Internet	[REDACTED]
		Artifacts	[REDACTED]
		(Browser	[REDACTED]
		History tab),	[REDACTED]
		JAE Ex. 22	[REDACTED]

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		<ul style="list-style-type: none"> Shih HD2 Internet Artifacts (Browser History tab), JAE Ex. 23 Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 	             Shafiq SJ Declaration at ¶¶10, 48 (JAE Ex. 58)
17.	<i>Watters did not use any sensitive search terms while visiting Etsy, Upwork and Sweetwater webpages.</i>	<ul style="list-style-type: none"> Watters Dep. at 87:25-88:2, JAE Ex. 7 Watters Desktop Internet Artifacts (Firefox Web History tab, Firefox Web 	Disputed in part. Defendants         

1		Visits tab,	[REDACTED]
2		Other History	[REDACTED]
3		tab), JAE Ex.	[REDACTED]
4		25	[REDACTED]
5		• Watters	[REDACTED]
6		Galaxy S22	[REDACTED]
7		Internet	[REDACTED]
8		Artifacts	[REDACTED]
9		(Chrome Tab	Shafiq SJ Declaration
10		History tab,	at ¶¶10, 48 (JAE Ex.
11		Chrome Web	58)
12		History tab,	
13		Chrome Web	
14		Visits tab),	
15		JAE Ex. 26	
16		• Watters	
17		Galaxy A02s	
18		Internet	
19		Artifacts	
20		(Chrome Web	
21		History tab,	
22		Chrome Web	
23		Visits tab),	
24		JAE Ex. 27	
25	18.	Griffith configured her	• Griffith
26		browser settings to	Cookie
27		block third party	Settings, JAE
28		cookies while visiting	Ex. 10
			Undisputed.

1		websites like Hulu,	• Griffith	
2		Etsy, RiteAid, and	Desktop	
3		Build-a-Bear.	Artifacts	
4			(Chrome Web	
5			History tab),	
6			JAE Ex. 12	
7	19.	Shih regularly used	• Shih Dep.	Undisputed.
8		software to block ads	92:12-16,	
9		and cookies while	116:15-19,	
10		visiting websites like	126:2-5,	
11		Hulu, Etsy and	127:14-19,	
12		Upwork.	JAE Ex. 5	
13			• Schnell July	
14			Report ¶¶ 81-	
15			82, JAE Ex. 28	
16			• Li Dep. at	
17			270:1-273:9,	
18			JAE Ex. 3	
19	20.	Shih configured her	• Shih Dep.	Undisputed.
20		browser settings to	135:9-13, JAE	
21		obscure her IP address	Ex. 5	
22		while visiting websites		
23		when using Safari.		
24	21.	Watters used software	• Watters Dep.	Undisputed.
25		to block the use of third	at 105:11-15,	
26		party cookies by	JAE Ex. 7	
27		websites like Etsy,		
28				

1		Upwork and	• Watters Dep.	
2		Sweetwater.	at 106:6-14,	
3			JAЕ Ex. 7	
4			• Shih Dep. at	
5			116:15-19,	
6			JAЕ Ex. 5	
7	Plaintiffs' Undisputed Facts for Issue No. 1			
8	22.		• Shafiq	Undisputed for purposes of this motion. <i>See</i> JAO at Fact No. 22.
9			Opening Class	
10			Cert. Decl. at	
11			¶¶11, 57-65	
12			(JAЕ Ex. 30)	
13			• Shafiq	
14			Opening	
15			Report ¶¶46-	
16			51 (JAЕ Ex.	
17			57)	
18				
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21	23.	Defendants'	• Shafiq Class	Undisputed.
22			Cert. Reply	
23			Decl. ¶ 77 &	
24			n.134 (JAЕ	
25			Ex. 56)	
26			• Sahni Dep.	
27			171:14-16	
28			(JAЕ Ex. 6)	

1	24.	Defendants have	<ul style="list-style-type: none"> TIKTOK-BG-000151723, at 742 (JAE Ex. 71) Shafiq Class Cert. Reply Decl. ¶ 77 (JAE Ex. 56) 	Undisputed for purposes of this motion. <i>See</i> JAO at Fact No. 24.
2		described [REDACTED]		
3		[REDACTED]		
4		[REDACTED]		
5		[REDACTED]		
6		[REDACTED]		
7		[REDACTED]		
8		[REDACTED]		
9	25.	Defendants have	<ul style="list-style-type: none"> TIKTOK-BG-000151723, at 742 (JAE Ex. 71) Shafiq Class Cert. Reply Decl. ¶ 77 (JAE Ex. 56) 	Undisputed.
10		reported that		
11		[REDACTED]		
12		[REDACTED]		
13		[REDACTED]		
14		[REDACTED]		
15		[REDACTED]		
16		[REDACTED]		
17	26.	Defendants' March 28,	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 8, 31-33 (JAE 58) Shafiq Opening Report at ¶¶ 59, 62 (JAE Ex. 57) Supplemented Appendix D to Shafiq 	Disputed. This is not supported by the evidence cited by Plaintiffs. <i>See</i> JAO at Fact No. 26.
18		2024 and May 21, 2024		
19		sample data confirm		
20		[REDACTED]		
21		[REDACTED]		
22		[REDACTED]		
23		[REDACTED]		
24		[REDACTED]		
25		[REDACTED]		
26		[REDACTED]		
27		[REDACTED]		
28		[REDACTED]		

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		Opening Report (JAE Ex. 66)	
27.	Defendants' March 28, 2024 and May 21, 2024 sample data confirm [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 8, 11-30 (JAE Ex. 58) Shafiq Opening Report at ¶¶ 60, 63 (JAE Ex. 57) Supplemented Appendix D to Shafiq Opening Report (JAE Ex. 66) 	Disputed. This is not supported by the evidence cited by Plaintiffs. <i>See</i> JAO at Fact No. 27.
28.	Defendants' March 28, 2024 and May 21, 2024 sample data confirm [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 9, 31 (JAE Ex. 58) 	Undisputed for purposes of this motion. <i>See</i> JAO at Fact No. 28.
29.	Defendants' March 28, 2024 and May 21, 2024 sample data confirm	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 9, 11, 14, 	Undisputed.

1			16, 21-29	
2			(JAE Ex. 58)	
3				
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5	30.	Defendants' March 28, 2024 and May 21, 2024 sample data confirm that	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 8-9, 11-30 (JAE Ex. 58) Shafiq Opening Report at ¶¶ 60, 63 (JAE Ex. 57) Supplemented Appendix D to Shafiq Opening Report (JAE Ex. 66) 	Disputed. This is not supported by the evidence cited by Plaintiffs. <i>See</i> JAO at Fact No. 30.
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20	31.	Plaintiffs' browsing history on websites that use the Pixel or EAPI confirm	<ul style="list-style-type: none"> Shafiq SJ Declaration at ¶¶ 34-46 (JAE Ex. 58) Shafiq Opening Report at ¶¶ 64-67 (JAE Ex. 57) 	Disputed. This is not supported by the evidence cited by Plaintiffs. <i>See</i> JAO at Fact No. 31.
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1			<ul style="list-style-type: none"> Supplemented Appendix R to Shafiq Opening Report (JAE Ex. 67) 	
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7	32.	<div></div> <div></div> <div></div> <div></div>	<ul style="list-style-type: none"> Shafiq SJ Declaration ¶ 36 n.15 (JAE Ex. 58) Schnell July Report at ¶ 81(a) (JAE Ex. 28) 	Undisputed.
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15	33.	<p>Extrapolating from the March 28, 2024 and May 21, 2024 sample data produced by Defendants, <div></div></p> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div> <div></div>	<ul style="list-style-type: none"> Shafiq SJ Declaration ¶ 10 (JAE Ex. 58) 	Undisputed for purposes of this motion. <i>See</i> JAO at Fact No. 33.
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Issue 2. DEFENDANTS' POSITION: THERE IS NO EVIDENCE THAT DEFENDANTS INTERCEPTED THE CONTENTS OF ANY OF PLAINTIFFS' COMMUNICATIONS.

34.	No contents of Plaintiffs' communications were disclosed or collected by Defendants through use of the Pixel.	<ul style="list-style-type: none"> • Schnell September Report ¶¶ 18-19, 29 38, 40, 47, 59, JAE Ex. 29 • Griffith iPhone Artifacts (Webkit Browser Web History tab), JAE Ex. 11 • Griffith Desktop Artifacts (Chrome Web History tab), JAE Ex. 12 • Shih Macbook Internet Artifacts (Browser 	Disputed. [REDACTED]
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		<p>History tab), JAE Ex. 21</p> <ul style="list-style-type: none"> • Shih HD1 Internet Artifacts (Browser History tab), JAE Ex. 22 • Shih HD2 Internet Artifacts (Browser History tab), JAE Ex. 23 • Shih iPhone Internet Artifacts (Browser History tab), JAE Ex. 24 	<div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-bottom: 5px;"></div> <ul style="list-style-type: none"> • Shafiq Opening Report ¶¶ 52-66, JAE Ex. 57. • Shafiq SJ Declaration ¶¶ 4-46, JAE Ex. 58.
35.	No contents of Plaintiffs' communications were contemporaneously disclosed or collected by Defendants via the Pixel while those	<ul style="list-style-type: none"> • Schnell July Report ¶¶ 67; 111-26, JAE Ex. 28 • Shafiq Dep. at 185:19-24; 185:25-186:11; 	<p>Disputed.</p> <p>TikTok Pixel sets up event listeners to instantly—in real time and without any delay—intercept content information being transmitted</p>

1		communications were	192:18-	from the website
2		made or in transit.	193:21, JAE	visitor's browser to
3			Ex. 4	the website's server.
4			• Schnell	TikTok Pixel then
5			September	sends the intercepted
6			Report ¶¶	content to TikTok's
7			19-24,	server in real time
8			102-114, JAE	with the loading of
9			Ex. 29	the webpage.
10			• Li Dep. at	• Shafiq Opening
11			142:13-144:1,	Class Cert.
12			199:8-14,	Decl. ¶¶67-71
13			209:3-14, JAE	(JAE Ex. 30)
14			Ex. 3	• Shafiq Class
15				Cert. Reply
16				Decl. ¶ 100,
17				JAE Ex. 56.
18				
19	36.	No contents of	• Schnell	Disputed. [REDACTED]
20		Plaintiffs'	September	[REDACTED]
21		communications were	Report ¶¶	[REDACTED]
22		disclosed to Defendants	19-24,	[REDACTED]
23		through use of Events	102-114, JAE	[REDACTED]
24		API.	Ex. 29	[REDACTED]
25			• Griffith iPhone	[REDACTED]
26			Artifacts	[REDACTED]
27			(Webkit	[REDACTED]
28			Browser Web	[REDACTED]

1		History tab),	[REDACTED]
2		JAE Ex. 11	[REDACTED]
3		• Griffith	[REDACTED]
4		Desktop	[REDACTED]
5		Artifacts	[REDACTED]
6		(Chrome Web	[REDACTED]
7		History tab),	[REDACTED]
8		JAE Ex. 12	[REDACTED]
9		• Shih Macbook	[REDACTED]
10		Internet	[REDACTED]
11		Artifacts	[REDACTED]
12		(Browser	[REDACTED]
13		History tab),	[REDACTED]
14		JAE Ex. 21	[REDACTED]
15		• Shih HD1	[REDACTED]
16		Internet	[REDACTED]
17		Artifacts	• Shafiq Opening
18		(Browser	Report ¶¶ 52-66,
19		History tab),	JAE Ex. 57.
20		JAE Ex. 22	• Shafiq SJ
21		• Shih HD2	Declaration ¶¶ 4-
22		Internet	46, JAE Ex. 58.
23		Artifacts	
24		(Browser	
25		History tab),	
26		JAE Ex. 23	
27		• Shih iPhone	
28		Internet	

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		Artifacts (Browser History tab), JAE Ex. 24	
37.	No contents of Plaintiffs’ communications were contemporaneously disclosed or collected by Defendants via Events API while those communications were made or in transit.	<ul style="list-style-type: none"> • Schnell July Report ¶¶ 57-60, JAE Ex. 28 • Shafiq Dep. at 122:14-20, JAE Ex. 4 	<p>Disputed. [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> • Shafiq Opening Class Cert. Decl. ¶ 41 n.81 (JAE Ex. 30) • Shafiq Reply Class Cert. Decl. ¶ 102 (JAE Ex. 56) • JAE Ex. 70
38.	Information is shared by Events API after it is received by advertisers.	<ul style="list-style-type: none"> • Schnell July Report ¶¶ 57-60, JAE Ex. 28 	Undisputed. <i>But see supra</i> JAF-41; JAO.

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		<ul style="list-style-type: none"> Shafiq Dep. at 122:17-20, JAE Ex. 4 	
Plaintiffs' Undisputed Facts for Issue No. 2			
39.	TikTok [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<ul style="list-style-type: none"> TIKTOK-BG-000008579 (JAE Ex. 68) Shafiq SJ Declaration at ¶ 50 (JAE Ex. 58) Shafiq Opening Class Cert. Decl. ¶70 (JAE Ex. 30) 	Undisputed.
40.	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<ul style="list-style-type: none"> TIKTOK-BG-000151808 (JAE Ex. 69) Shafiq SJ Declaration at ¶ 50; <i>see also id.</i> ¶¶ 49-56 (JAE Ex. 58) Shafiq Opening Class Cert. Decl. ¶¶ 64, 70 (JAE Ex. 30) 	Undisputed.

1			<ul style="list-style-type: none"> TIKTOK-BG-000151574, JAE Ex. 63. 	
2	41.	Defendants enable and “highly recommend[s]” to advertisers that use Events API to “send the event in real-time (without batching) as soon as it is seen on the advertiser’s server.”	<ul style="list-style-type: none"> JAE Ex. 70 Shafiq Opening Class Cert. Decl. ¶ 41 (JAE Ex. 30) Shafiq SJ Declaration at ¶ 56 (JAE Ex. 58) 	Undisputed.
3	42.	The March 28, 2024 and May 21, 2024 sample data from Defendants demonstrates that Defendants collect full-string URLs that include search terms or the particular products or documents within a website that a visitor views.	<ul style="list-style-type: none"> Shafiq Opening Report ¶¶ 89-94; <i>see also id.</i> ¶¶ 55-63 (JAE Ex. 57) Shafiq SJ Declaration ¶¶ 9, 11-33, 47-48 (JAE Ex. 58) 	Undisputed.
4	43.	Pixel and Events API can and do collect	<ul style="list-style-type: none"> Shafiq Opening Class 	Undisputed.

1		information about what a	Cert. Decl.	
2		website visitor is	¶ 65 (JAE Ex.	
3		viewing, including the	30)	
4		title of a webpage, the		
5		description of a webpage		
6		as well as the product or		
7		item name, category, and		
8		identifier.		
9	44.	Plaintiffs' expert Dr.	• Shafiq Class	Undisputed for
10		Shafiq found, based on	Cert. Decl. ¶	purposes of this
11		his analysis of a sample,	78 (JAE Ex.	motion. <i>See</i> JAO at
12		that Defendants collect	30)	Fact No. 44.
13		the Default Data from	• Shafiq	
14		between 97.2% and	Opening	
15		100% of websites that	Report ¶ 47	
16		use the Pixel.	(JAE Ex. 57)	
17				
18	45.	Pixel source code	• Shafiq Class	Undisputed for
19		contains event listeners	Cert. Reply	purposes of this
20		that are triggered before	Decl. ¶ 100	motion. <i>See</i> JAO at
21		a webpage has even	(JAE Ex. 56)	Fact No. 45.
22		finished loading, and	• Shafiq SJ	
23		these event listeners	Declaration	
24		intercept users' mouse	¶ 51 (JAE Ex.	
25		movements, keystrokes,	58)	
26		and button clicks.		
27	46.	The lapse of time	• Shafiq SJ	Undisputed for
28		between a website visitor	Declaration	purposes of this

1	pressing next and the	¶¶ 52-55 (JAE	motion. <i>See</i> JAO at
2	next webpage starting to	Ex. 58)	Fact No. 46.
3	load is a matter of		
4	milliseconds.		
5	<u>Issue 3. DEFENDANTS' POSITION: PLAINTIFFS CONSENTED TO</u>		
6	<u>ADVERTISERS' USE OF THE PIXEL AND EAPI.</u>		
7	47. When Griffith created	<ul style="list-style-type: none"> Griffith Dep. 68:21-69:11, 	Disputed. Griffith's
8	her Rite Aid account,	132:8-11;	cited deposition
9	she was required to	219:22-220:7,	testimony does not
10	agree to Rite Aid's	JAE Ex. 2	establish whether she
11	Terms of Use and		was required to agree
12	Privacy Policy.	<ul style="list-style-type: none"> Rite Aid 2024 	to Rite Aid's terms of
13		Create	use or privacy policy
14		Account at 1,	when she created her
15		JAE Ex. 32	Rite Aid account, or
16		<ul style="list-style-type: none"> Rite Aid 2022 	what terms of use or
17		Create	privacy policy were in
18		Account at 1,	effect at the time. <i>See</i>
19		JAE Ex. 33	<i>also</i> JAO.
20		<ul style="list-style-type: none"> Rite Aid 2019 	
21		Privacy	
22		Policy, JAE	
23		Ex. 45	
24	48. Rite Aid's Privacy	<ul style="list-style-type: none"> Rite Aid 2019 	Undisputed. <i>But see</i>
25	Policy informed	Privacy Policy	JAO.
26	visitors that it would	("What	
27	"collect personal	Information	
28	information" and	We Collect";	

1		“information about	“Information	
2		your viewing, search	Automatically	
3		and purchase history	Collected”;	
4		and information about	“How We Use	
5		the referring URL and	Your	
6		the URL clickstream”	Information”),	
7		and “share personal	JAE Ex. 45	
8		information with third		
9		parties who perform		
10		services on our behalf.”		
11	49.	Rite Aid’s Privacy	• Rite Aid 2023	Undisputed. <i>But see</i>
12		Policy informed	Privacy Policy	JAO.
13		visitors that it may	§§10(A)(1);	
14		deploy “cookies,	1(D), JAE Ex.	
15		beacons, pixel tags,	34	
16		mobile ad identifiers,		
17		and similar technology”		
18		and “use certain		
19		cookies known as		
20		‘Third Party Targeting		
21		Cookies’ as well as		
22		other advertising		
23		techniques to share		
24		limited identifying		
25		information including		
26		Online User Activity		
27		with advertising		
28		partners to provide you		

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	with advertising about products and services tailored to your interests.”		
50.	Griffith was required to agree to Hulu’s Terms of Use and Privacy Policy when she created her Hulu accounts.	<ul style="list-style-type: none"> • Hulu 2019 Sign Up Page at 1, JAE Ex. 35 • Hulu 2020 Sign Up Page at 1, JAE Ex. 36 • Hulu 2023 Create Account at 1, JAE Ex. 48 • Hulu 2019 Privacy Policy §1, JAE Ex. 38 • Griffith Dep. 132:8-11, JAE Ex. 2 • Griffith November 2023 Hulu Report at 1, JAE Ex. 13 	Disputed. Griffith’s cited deposition testimony does not establish whether she was required to agree to Hulu’s terms of use or privacy policy when she created her Hulu account, or what terms of use or privacy policy were in effect at the time. <i>See also</i> JAO.

1			<ul style="list-style-type: none"> • Griffith April 2023 Hulu Report at 1, JAE Ex. 14 	
2			<ul style="list-style-type: none"> • Griffith 2020 Hulu Report at 1, JAE Ex. 15 	
3			<ul style="list-style-type: none"> • Griffith 2019 Hulu Report at 1, JAE Ex. 16 	
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11	51.	Shih was required to agree to Hulu's Terms of Use and Privacy Policy when she created her Hulu accounts.	<ul style="list-style-type: none"> • Hulu 2010 Create Account at 1, JAE Ex. 46 • Hulu 2012 Create Account at 1, JAE Ex. 47 • Shih Hulu Report, JAE Ex. 18 at 1 • Shih Dep. at 205:13-206:14, JAE Ex. 5 	Disputed. Shih's cited deposition testimony does not establish whether she was required to agree to Hulu's terms of use or privacy policy when she created her Hulu account, or what terms of use or privacy policy were in effect at the time. <i>See also</i> JAO.
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26	52.	When Shih created her Hulu account in 2011, the Privacy Policy	<ul style="list-style-type: none"> • Hulu 2012 Privacy Policy ("Information 	Undisputed. <i>See also</i> JAO.
27				
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1		disclosed that	Collected	
2		“information about you	About You”	
3		is collected, used and	and “Third	
4		shared,” including	Party	
5		through “information	Advertising	
6		automatically collected	On Hulu”),	
7		. . . via cookies, web	JAЕ Ex. 37	
8		beacons or other		
9		technologies” and that		
10		Hulu partners with		
11		“third party Internet		
12		advertising companies”		
13		that “use cookies, web		
14		beacons, and other		
15		technologies to collect		
16		information about your		
17		use of the Hulu		
18		Services in order to		
19		deliver advertisements		
20		to you, measure their		
21		effectiveness, and		
22		personalize advertising		
23		content.”		
24	53.	Since 2019, Hulu’s	• Hulu 2019	Undisputed. <i>See also</i>
25		Privacy Policy	Privacy Policy	JAO.
26		disclosed that it collects	§§2; 4, JAE	
27		names, email addresses,	Ex. 38	
28		birth dates, genders,		

1	credit card information,	• Hulu 2020	
2	billing addresses, ZIP	Privacy Policy	
3	codes as well as IP	§§2; 4, JAE	
4	addresses, devices,	Ex. 39	
5	browser and software	• Hulu/Disney	
6	characteristics (such as	2023 Privacy	
7	type and operating	Policy (“Types	
8	system), locations	of Information	
9	(which may include	We Collect”;	
10	precise location data),	“Use Of Your	
11	activity on the Hulu	Information	
12	Services including	By The Walt	
13	information about the	Disney Family	
14	videos users view on	Of	
15	Hulu (e.g., show titles	Companies”;	
16	and episode names),	“Sharing Your	
17	page views, ad data,	Information	
18	referral URLs, network	With Other	
19	state, device identifiers	Entities”), JAE	
20	or other unique	Ex. 40	
21	identifiers such as		
22	advertising identifiers		
23	and identifiers		
24	associated with browser		
25	cookies and shares		
26	information collected		
27	from or about users		
28	with third parties,		

1		including business		
2		partners, social		
3		networking services,		
4		service providers,		
5		advertisers, and other		
6		companies that are not		
7		affiliated with Hulu,		
8		including for		
9		advertising purposes.		
10	54.	Since 2019, Hulu’s	• Hulu 2019	Undisputed. <i>See also</i>
11		Privacy Policy	Privacy Policy	JAO.
12		disclosed that it uses	§2, JAE EX.	
13		technologies such as	38;	
14		cookies and web	• Hulu 2020	
15		beacons or pixel tags,	Privacy Policy	
16		which can be embedded	§2, JAE Ex. 39	
17		in web pages, videos,	• Hulu/Disney	
18		or emails, to collect	2023 Privacy	
19		certain types of	Policy (“How	
20		information from users’	We Collect	
21		browsers or devices.	Your	
22			Information”),	
23			JAE Ex. 40	
24	55.	Griffith was required to	• Griffith Dep.	Disputed. Griffith’s
25		agree to Etsy’s Terms	at 132:8-11,	cited deposition
26		of Use and Privacy	JAE Ex. 2	testimony does not
27		Policy when she		establish whether she
28				was required to agree

1		created her Etsy	<ul style="list-style-type: none"> • Griffith Etsy Profile, JAE Ex. 9 	to Etsy's terms of use
2		account.	<ul style="list-style-type: none"> • Etsy 2018 Create Account at 1, JAE Ex. 51 	or privacy policy
3			<ul style="list-style-type: none"> • Etsy 2018 Privacy Policy §1, JAE Ex. 52 	when she created her
4				Etsy account, or what
5				terms of use or
6				privacy policy were in
7				effect at the time. <i>See</i>
8				<i>also</i> JAO.
9				
10				
11	56.	Shih was required to	<ul style="list-style-type: none"> • Shih Etsy Account Sign Up Email, JAE Ex. 17 	Disputed. Shih's cited
12		agree to Etsy's Terms	<ul style="list-style-type: none"> • Etsy 2017 Create Account at 1, JAE Ex. 50 	deposition testimony
13		of Use and Privacy	<ul style="list-style-type: none"> • Etsy 2017 Privacy Policy, JAE Ex. 41. 	does not establish
14		Policy when she		whether she was
15		created her Etsy		required to agree to
16		account.		Etsy's terms of use or
17				privacy policy when
18				she created her Etsy
19				account, or what
20				terms of use or
21				privacy policy were in
22				effect at the time. <i>See</i>
23				<i>also</i> JAO.
24	57.	Watters was required to	<ul style="list-style-type: none"> • Watters Dep. 66:17-24; 	Disputed. Watters'
25		agree to Etsy's Terms	<ul style="list-style-type: none"> 76:5-25, 	deposition testimony
26		of Use and Privacy	<ul style="list-style-type: none"> 91:13-20; 	does not establish
27		Policy when he created		whether he was
28		his Etsy account.		required to agree to

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		<p>93:22-94:4, JAE Ex. 7</p> <ul style="list-style-type: none"> • Etsy 2020 Sign In, JAE Ex. 49 	Etsy’s terms of use or privacy policy when he created his Etsy account, or what terms of use or privacy policy were in effect at the time. <i>See also</i> JAO.
58.	In 2017, Etsy’s Privacy Policy explained that “Etsy automatically receives and records ... your IP address or unique device identifier, cookies and data about which pages you visit on the Site or on the Apps and stores it in log files” and that Etsy “may combine this automatically collected information with other information we collect about you” and use it “with certain third-party service providers for targeted online and offline marketing.”	<ul style="list-style-type: none"> • Etsy 2017 Privacy Policy (“Information Collected or Received”), JAE Ex. 41 	Undisputed. <i>See also</i> JAO.

1	59.	Etsy’s 2017 Privacy Policy disclosed that	• Etsy 2017 Privacy Policy (“Information Uses, Sharing & Disclosure”), JAE Ex. 41	Undisputed. <i>See also</i> JAO.
2		“certain cookies and		
3		other tracking		
4		mechanisms on our site		
5		are used by third parties		
6		for targeted online		
7		marketing and other		
8		purposes.”		
9				
10	60.	In 2018, Etsy updated	• Etsy 2018 Privacy Policy §1, JAE Ex. 52	Undisputed. <i>See also</i> JAO.
11		its privacy policy to		
12		add that “[i]f you don’t		
13		want us to collect or		
14		process your personal		
15		information in the ways		
16		described in this policy,		
17		you shouldn’t use the		
18		Services.”		
19	61.	Etsy’s 2020 Privacy Policy also stated that	• Etsy 2020 Privacy Policy §2, JAE Ex. 53	Undisputed. <i>See also</i> JAO.
20		“Etsy automatically		
21		receives and records ...		
22		your IP address or		
23		unique device		
24		identifier, cookies and		
25		data about which pages		
26		you visit on the Site or		
27		on the Apps and stores		
28				

1		it in log files” and that		
2		Etsy “may combine this		
3		automatically collected		
4		information with other		
5		information we collect		
6		about you” and use it		
7		“with certain third-		
8		party service providers		
9		for targeted online and		
10		offline marketing.”		
11	62.	Etsy’s 2020 Privacy	• Etsy 2020	Undisputed. <i>See also</i>
12		Policy likewise stated	Privacy Policy	JAO.
13		that “certain cookies	§6, JAE Ex. 53	
14		and other similar		
15		technologies on the Site		
16		are used by third parties		
17		for targeted online		
18		marketing and other		
19		purposes” and that “[i]f		
20		you don’t want us to		
21		collect or process your		
22		personal information in		
23		the ways described in		
24		this policy, you		
25		shouldn’t use the		
26		Services.”		
27	63.	Shih was required to	• Upwork 2024	Disputed. Shih’s cited
28		agree to Upwork’s	Create	deposition testimony

1		Privacy Policy when	Account, JAE	does not establish
2		creating her Upwork	Ex. 42	whether she was
3		accounts.	• Shih Upwork	required to agree to
4			Account	Upwork's terms of
5			Creation	use or privacy policy
6			Email, JAE	when she created her
7			Ex. 19	Upwork account, or
8			• Shih Upwork	what terms of use or
9			Privacy Policy	privacy policy were in
10			Update Email,	effect at the time. <i>See</i>
11			JAE Ex. 20	<i>also</i> JAO.
12			• Shih Dep. at	
13			162:5-165:4,	
14			JAE Ex. 5	
15	64.	Watters was required to	• Watters Dep.	Disputed. Watters'
16		agree to Upwork's	at 138:1-	cited deposition
17		Privacy Policy when	139:11, JAE	testimony does not
18		creating his Upwork	Ex. 7	establish whether he
19		accounts.	• Upwork 2024	even had an Upwork
20			Create	account, whether he
21			Account, JAE	was required to agree
22			Ex. 42	to Upwork's terms of
23				use or privacy policy
24				when if created his
25				Upwork account, or
26				assuming he did, what
27				terms of use or
28				privacy policy were in

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			effect at the time. <i>See also</i> JAO.
65.	Upwork’s 2018 Privacy Policy notified users that Upwork and its third party service providers may use “both persistent cookies that remain on your computer ... and session ID cookies, which expire at the end of your browser session” or “software technology known as ‘web beacons’ and/or ‘tracking tags’ to help us . . . to serve relevant advertising to you” and its advertisers “may collect certain information about your visits to and activity on the Service . . . they may set and access their own tracking technologies on your device (including	<ul style="list-style-type: none"> Upwork 2018 Privacy Policy §1, JAE Ex. 43 	Undisputed. <i>See also</i> JAO.

1		cookies and web		
2		beacons), and may use		
3		that information to		
4		show you targeted		
5		advertisements.”		
6	66.	Upwork’s 2018 Privacy	• Upwork 2018	Undisputed. <i>See also</i>
7		Policy disclosed that	Privacy Policy	JAO.
8		Upwork collected	§1, JAE Ex.	
9		“information that	43.	
10		identifies you as a		
11		specific individual and		
12		can be used to contact		
13		or identify you,”		
14		including “your name,		
15		email address, company		
16		address, billing address,		
17		and phone number.”		
18	67.	Upwork’s 2018 Privacy	• Upwork 2018	Undisputed. <i>See also</i>
19		Policy stated that it	Privacy Policy	JAO.
20		“may render Personal	§1, JAE Ex. 43	
21		Information (generally,		
22		email address) into a		
23		form of Non-		
24		Identifying Information		
25		referred to ... as		
26		‘Hashed Information.’”		
27				
28				

1	68.	Upwork’s 2018 Privacy	• Upwork 2018	Undisputed. <i>See also</i>
2		Policy notified users	Privacy Policy	JAO.
3		that Upwork and its	§1, JAE Ex. 43	
4		third party service		
5		providers may		
6		automatically collect		
7		“information		
8		commonly shared when		
9		browsers communicate		
10		with websites” and that		
11		it “may otherwise		
12		disclose Non-		
13		Identifying Information		
14		(including, without		
15		limitation, Hashed		
16		Information) to third		
17		parties.”		
18	69.	Upwork’s 2018 Privacy	• Upwork 2018	Undisputed. <i>See also</i>
19		Policy notified users	Privacy Policy	JAO.
20		that it and its “third	§1, JAE Ex. 43	
21		party service providers,		
22		including analytics and		
23		third party content		
24		providers, may		
25		automatically collect		
26		certain information		
27		from you whenever you		
28		access or interact with		

1	the Service,” including		
2	“the browser and		
3	operating system you		
4	are using, the URL or		
5	advertisement that		
6	referred you to the		
7	Service, the search		
8	terms you entered into		
9	a search engine that led		
10	you to the Service,		
11	areas within the Service		
12	that you visited, and		
13	other information		
14	commonly shared when		
15	browsers communicate		
16	with websites. We may		
17	combine this		
18	automatically collected		
19	log information with		
20	other information we		
21	collect about you.”		
22	70. Upwork’s 2018 Privacy	• Upwork 2018	Undisputed. <i>See also</i>
23	Policy disclosed that it	Privacy Policy	JAO.
24	“works with (or may in	§1, JAE Ex. 43	
25	the future work with)		
26	network advertisers, ad		
27	agencies, analytics		
28	service providers and		

1	other vendors to		
2	provide us with		
3	information regarding		
4	traffic on the Service,”		
5	and that these third		
6	parties “may collect		
7	certain information		
8	about your visits to and		
9	activity on the Service		
10	as well as other		
11	websites or services,		
12	they may set and access		
13	their own tracking		
14	technologies on your		
15	device (including		
16	cookies and web		
17	beacons), and may use		
18	that information to		
19	show you targeted		
20	advertisements.”		
21	71. Upwork’s 2022 Privacy	• Upwork 2022	Undisputed. <i>See also</i>
22	Policy similarly stated	Privacy Policy	JAO.
23	that its third party	§1; §5, JAE	
24	service providers may	Ex. 54	
25	use “both persistent		
26	cookies that remain on		
27	your computer ... and		
28	session ID cookies,		

1	which expire at the end		
2	of your browser		
3	session” or “software		
4	technology known as		
5	‘web beacons’ and/or		
6	‘tracking tags’ to help		
7	us . . . to serve relevant		
8	advertising to you” and		
9	its advertisers “may		
10	collect certain		
11	information about your		
12	visits to and activity on		
13	the Service . . . they		
14	may set and access		
15	their own tracking		
16	technologies on your		
17	device (including		
18	cookies and web		
19	beacons), and may use		
20	that information to		
21	show you targeted		
22	advertisements.”		
23	72. Upwork’s 2022 Privacy	• Upwork 2022	Undisputed. <i>See also</i>
24	Policy disclosed that	Privacy Policy	JAO.
25	Upwork collected	§1, JAE Ex. 54	
26	“information that		
27	identifies you as a		
28	specific individual and		

1		can be used to contact		
2		or identify you,”		
3		including “your name,		
4		email address, company		
5		address, billing address,		
6		and phone number.”		
7	73.	Upwork’s 2022 Privacy	• Upwork 2022	Undisputed. <i>See also</i>
8		Policy stated that it	Privacy Policy	JAO.
9		“may render Personal	§1, JAE Ex. 54	
10		Information (generally,		
11		email address) into a		
12		form of Non-		
13		Identifying Information		
14		referred to ... as		
15		‘Hashed Information.’”		
16	74.	Upwork’s 2022 Privacy	• Upwork 2022	Undisputed. <i>See also</i>
17		Policy also notified	Privacy Policy	JAO.
18		users that Upwork and	§1; §4, JAE	
19		its third party service	Ex. 54	
20		providers may		
21		automatically collect		
22		“information		
23		commonly shared when		
24		browsers communicate		
25		with websites” and that		
26		it “may otherwise		
27		disclose Non-		
28		Identifying Information		

1		(including, without		
2		limitation, Hashed		
3		Information) to third		
4		parties.”		
5	75.	Upwork’s 2022 Privacy	• Upwork 2022	Undisputed. <i>See also</i>
6		Policy notified users	Privacy Policy	JAO.
7		that it and its “third	§1, JAE Ex. 54	
8		party service providers,		
9		including analytics and		
10		third party content		
11		providers, may		
12		automatically collect		
13		certain information		
14		from you whenever you		
15		access or interact with		
16		the Service,” including		
17		“the browser and		
18		operating system you		
19		are using, the URL or		
20		advertisement that		
21		referred you to the		
22		Service, the search		
23		terms you entered into		
24		a search engine that led		
25		you to the Service,		
26		areas within the Service		
27		that you visited, and		
28		other information		

1		commonly shared when		
2		browsers communicate		
3		with websites. We may		
4		combine this		
5		automatically collected		
6		log information with		
7		other information we		
8		collect about you.”		
9	76.	Upwork’s 2022 Privacy	• Upwork 2022	Undisputed. <i>See also</i>
10		Policy also disclosed	Privacy Policy	JAO.
11		that it “works with (or	§5, JAE Ex. 54	
12		may in the future work		
13		with) network		
14		advertisers, ad		
15		agencies, analytics		
16		service providers and		
17		other vendors to		
18		provide us with		
19		information regarding		
20		traffic on the Service,”		
21		and that these third		
22		parties “may collect		
23		certain information		
24		about your visits to and		
25		activity on the Service		
26		as well as other		
27		websites or services,		
28		they may set and access		

1		their own tracking		
2		technologies on your		
3		device (including		
4		cookies and web		
5		beacons), and may use		
6		that information to		
7		show you targeted		
8		advertisements.”		
9	77.	Griffith continued to	<ul style="list-style-type: none"> Griffith 	Undisputed.
10		visit the Hulu, Etsy,	November	
11		and Build-A-Bear	2023 Hulu	
12		websites after filing this	Report at 1,	
13		action, knowing that	JAE Ex. 13	
14		information about those	<ul style="list-style-type: none"> Griffith Dep. 	
15		visits might be shared	at 176:18-20,	
16		with Defendants	JAE Ex. 2	
17		through Pixel and	<ul style="list-style-type: none"> Griffith 	
18		Events API.	Desktop	
19			Artifacts	
20			(Chrome Web	
21			History tab),	
22			JAE Ex. 12	
23	78.	Shih continued to visit	<ul style="list-style-type: none"> Shih Dep. at 	Undisputed.
24		the Etsy and Upwork	264:6-276:9,	
25		websites after joining	280:12-	
26		this action, knowing	282:14,	
27		that information about	293:10-13,	
28		those visits might be	JAE Ex.5	

1		shared with Defendants	• Shih HD1	
2		through Pixel and	Internet	
3		Events API.	Artifacts	
4			(Browser	
5			History tab),	
6			JAE Ex. 22	
7	79.	Watters continued to	• Watters	Undisputed.
8		visit the Etsy website	Desktop	
9		after joining this action,	Internet	
10		knowing that	Artifacts	
11		information about those	(Firefox Web	
12		visits might be shared	History tab,	
13		with Defendants	Firefox Web	
14		through Pixel and	Visits tab,	
15		Events API.	Other History	
16			tab), JAE Ex.	
17			25	
18			• Watters	
19			Galaxy S22	
20			Internet	
21			Artifacts	
22			(Chrome Tab	
23			History tab,	
24			Chrome Web	
25			History tab,	
26			Chrome Web	
27			Visits tab),	
28			JAE Ex. 26	

Plaintiffs’ Undisputed Facts for Issue No. 3

80.	Hulu’s Privacy Policy states that “[w]e may share the information collected from or about you in encrypted, aggregated, or de-identified forms with advertisers and service providers that preform advertising-related services for us and our business partners in order to tailor, advertisements, measure and improve advertising effectiveness, and enable other enhancements.”	<ul style="list-style-type: none"> Hulu 2019 Privacy Policy, JAE Ex. 38. 	Undisputed.
81.	Hulu’s Privacy Policy Hulu states, in the “Information We Collect” section that: “We collect information when you use the Hulu Services	<ul style="list-style-type: none"> Hulu 2019 Privacy Policy, JAE Ex. 38. 	Undisputed.

1 or view Hulu
2 advertising outside the
3 Hulu Services.
4 Examples of this
5 information may
6 include your IP
7 address, device,
8 browser and software
9 characteristics (such as
10 type and operating
11 system, location (which
12 may include precise
13 location data), activity
14 on the Hulu Services
15 including information
16 about the videos you
17 view on Hulu (e.g.,
18 show titles and episode
19 names), page views, ad
20 data, referral URLs,
21 network state, device
22 identifiers and other
23 unique identifiers such
24 as advertising
25 identifiers (e.g., “ad-
26 ID” or “IDFA”), and
27 identifiers associated
28 with browser cookies

1		(see our description of		
2		“Coolies and Local		
3		Storage” below, and		
4		carrier information.”		
5	82.	Upwork’s 2018 Privacy	• Upwork 2018	Undisputed.
6		Policy notified users	Privacy	
7		that it and its “third	Policy, JAE	
8		party service providers,	Ex. 43	
9		including analytics and		
10		third party content		
11		providers, may		
12		automatically collect		
13		certain information		
14		from you whenever you		
15		access or interact with		
16		the Service,” including		
17		“the browser and		
18		operating system you		
19		are using, the URL or		
20		advertisement that		
21		referred you to the		
22		Service, the search		
23		terms you entered into		
24		a search engine that led		
25		you to the Service,		
26		areas within the Service		
27		that you visited, and		
28		other information		

1		commonly shared when		
2		browsers communicate		
3		with websites. We may		
4		combine this		
5		automatically collected		
6		log information with		
7		other information we		
8		collect about you. We		
9		do this to improve		
10		services we offer you,		
11		to improve marketing,		
12		analytics, and site		
13		functionality.”		
14	83.	Upwork’s 2018 Privacy	• JAE Ex. 43.	Undisputed.
15		Policy stated that		
16		“[I]ike many websites,		
17		we and our marketing		
18		partners, affiliates,		
19		analytics, and service		
20		providers use ‘cookies’		
21		to collect information.”		
22	84.	None of the privacy	• JAE Ex. 34.	Undisputed.
23		policies mentioned by	• JAE Ex. 37.	
24		Defendants contain	• JAE Ex. 38.	
25		explicit reference to	• JAE Ex. 39.	
26		TikTok or ByteDance.	• JAE Ex. 40.	
27			• JAE Ex. 41.	
28			• JAE Ex. 43.	

1			<ul style="list-style-type: none">• JAE Ex. 45.	
2			<ul style="list-style-type: none">• JAE Ex. 52.	
3			<ul style="list-style-type: none">• JAE Ex. 53.	
4			<ul style="list-style-type: none">• JAE Ex. 54.	
5	85.	TikTok, on its “About”	<ul style="list-style-type: none">• https://www.tiktok.com/about?lang=en,	Undisputed.
6		page, does not describe	JAE Ex. 76.	
7		itself as an analytics		
8		provider or network		
9		advertiser.		
10	86.	Watters testified that he	<ul style="list-style-type: none">• Watters Tr. at	Undisputed.
11		would not use a website	345:17, JAE	
12		with the Pixel unless he	Ex. 7.	
13		did not have another		
14		choice.		
15	87.	<div></div>	<ul style="list-style-type: none">• Shih Tr. at	Undisputed.
16		<div></div>	282:13-14,	
17		<div></div>	JAE Ex 5.	
18		<div></div>		
19		<div></div>		
20		<div></div>		
21	88.	Each Plaintiff declared	<ul style="list-style-type: none">• Declaration of	Undisputed.
22		that he or she did not	Bernadine	
23		consent to the	Griffith, at ¶ 6,	
24		collection of his or her	JAE Ex. 73.	
25		data by Defendants.	<ul style="list-style-type: none">• Declaration of	
26			Patricia Shih,	
27			at ¶ 6, JAE Ex.	
28			74.	

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		<ul style="list-style-type: none"> Declaration of Jacob Watters, at ¶ 6, JAE Ex. 75. 	
89.	Plaintiff Watters testified in his deposition that “[M]y information was or potentially was collected without my informed consent, I never agreed for TikTok to take it; I never agreed for it to be stored on those servers potentially or to be communicated to the CCP.”	<ul style="list-style-type: none"> Watters Tr. at 233:10-14, JAE Ex. 7. 	Undisputed.
90.	Plaintiff Shih testified in her deposition that “the data was taken from me, so effectively stolen without my consent . . . it should be reasonable to expect that I’m not going to have . . . some other website take data	<ul style="list-style-type: none"> Shih Tr. at 346:1-347:1, JAE Ex. 5. 	Undisputed.

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	directly from me without me knowing.”		
<u>Issue 4. DEFENDANTS’ POSITION: THERE IS NO EVIDENCE THAT ANY OF PLAINTIFFS’ PROPERTY WAS TAKEN.</u>			
91.	Use of the internet requires the sharing of data.	<ul style="list-style-type: none"> • Schnell July Report ¶ 33, JAE Ex. 28 • Schnell September Report ¶ 20-21 	Undisputed.
92.	Plaintiffs have not identified any information to which they have exclusive rights that was disclosed to or collected by Defendants through the Pixel or Events API.	<ul style="list-style-type: none"> • Schnell September Report ¶¶ 18, 20, 39-42, 47, 59, 61, JAE Ex. 29 	Disputed. Plaintiffs have “identified any information . . . that was disclosed to or collected by Defendants through the Pixel or Events API.” See Shafiq Merits Report Section V, ¶¶52-67 (JAE Ex. 57). Defendants’ contention that Plaintiffs did not “have exclusive rights” to this information is a substantive legal

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			argument, not a fact. <i>See</i> Blumenfeld, J., Summary Judgment Order (March 1, 2024), at 5, 7. <i>See also</i> JAO.
93.	Plaintiffs have not identified any information with financial value that was disclosed to or collected by Defendants through the Pixel or Events API.	<ul style="list-style-type: none"> Griffith Dep. at 238:22-239:2, JAE Ex.2 Shih Dep. at 334:19-335:21, 338:19-341:7, JAE Ex.5 Watters Dep. at 257:25-261:3, JAE Ex. 7 	<p>Disputed.</p> <p>Dr. Mangum has provided a determination of the financial value of the information that was collected by Defendants through the Pixel or Events API.</p> <ul style="list-style-type: none"> Mangum Opening Report ¶¶ 72-108, 115-22, JAE Ex. 59.
94.	Any information about Plaintiffs that was disclosed to or collected by the Pixel or Events API is not exclusively controlled by Plaintiffs.	<ul style="list-style-type: none"> Schnell September Report ¶¶ 18, 20-21, 39-42, 47, 59, 61, JAE Ex. 29 	<p>Disputed. Substantive legal argument.</p> <p>Blumenfeld, J., Summary Judgment Order (March 1, 2024), at 5, 7. <i>See</i> JAO.</p>

1	95.	Any information about	<ul style="list-style-type: none"> Griffith Dep. at 238:22:- 	Disputed.
2		Plaintiffs that was	239:2., JAE	Dr. Mangum has
3		disclosed or collected	Ex.2	provided a
4		by the Pixel or Events	<ul style="list-style-type: none"> Shih Dep. at 	determination of the
5		API has no financial	334:19-	financial value of the
6		value.	335:21,	information that was
7			338:19-341:7,	collected by
8			JAE Ex.5	Defendants through
9			<ul style="list-style-type: none"> Watters Dep. 	the Pixel or Events
10			at 257:25-	API.
11			261:3, JAE	<ul style="list-style-type: none"> Mangum Opening
12			Ex. 7	Report ¶¶ 72-108,
13				115-22, JAE Ex.
14				59.
15				
16	96.	No market exists for	<ul style="list-style-type: none"> Griffith Dep. at 238:22:- 	Disputed.
17		the volume and nature	239:2., JAE	Dr. Mangum has
18		of the Plaintiffs'	Ex.2	provided similar
19		browsing history that	<ul style="list-style-type: none"> Shih Dep. at 	market measures for
20		may have been	334:19-	the data collected by
21		disclosed or collected	335:21,	the Pixel or Events
22		by the Pixel or Events	338:19-341:7,	API.
23		API.	JAE Ex. 5	<ul style="list-style-type: none"> Mangum Opening
24			<ul style="list-style-type: none"> Watters Dep. 	Report ¶¶ 85-108,
25			at 257:25-	JAE Ex. 59.
26			261:3, JAE	
27			Ex. 7	
28				

Plaintiffs' Undisputed Facts for Issue No. 4

97.	SavvyConnect pays consumers a standard monthly fee to collect consumers' data.	• Mangum Opening Report, ¶¶ 96-99, JAE Ex. 59.	Undisputed.
98.	Screenwise pays consumers a standard monthly fee to collect consumers' data.	• Mangum Opening Report, ¶¶ 86-93, JAE Ex. 59.	Undisputed.
99.	Nielsen pays consumers a standard monthly fee to collect consumers' data.	• Mangum Opening Report, ¶¶ 94-95, JAE Ex. 59.	Undisputed.

1 Dated: October 4, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

2
3 By: /s/ Victor Jih
4 Victor Jih

5 *Counsel for Defendants*
6 TikTok Inc. and ByteDance Inc.

7 Dated: October 4, 2024

SUSMAN GODFREY L.L.P.

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9 By: s/ Ekwon E. Rhow
10 Ekwon E. Rhow

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12 Bernadine Griffith, Patricia Shih, and Jacob
13 Watters
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants TikTok Inc. and ByteDance Inc., attests under Local Rule 5-4.3.4(a)(2) that all other signatories listed, and on whose behalf this filing is jointly submitted, concur in the filing's content and have authorized the filing.

Dated: October 4, 2024

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Victor Jih

Attorney for Defendants
TikTok Inc. and ByteDance Inc.